

ATTACHMENT A



Closing Argument

UEP Supply Recommendations



Voluntary

Not followed

Not enforced

UEP Certified Program



Based on recommendations from scientific experts

Voluntary

Does NOT restrict hens, eggs, cages, houses, farms

Increased customer choice

Met customer demand

During the Alleged “Conspiracy” . . .

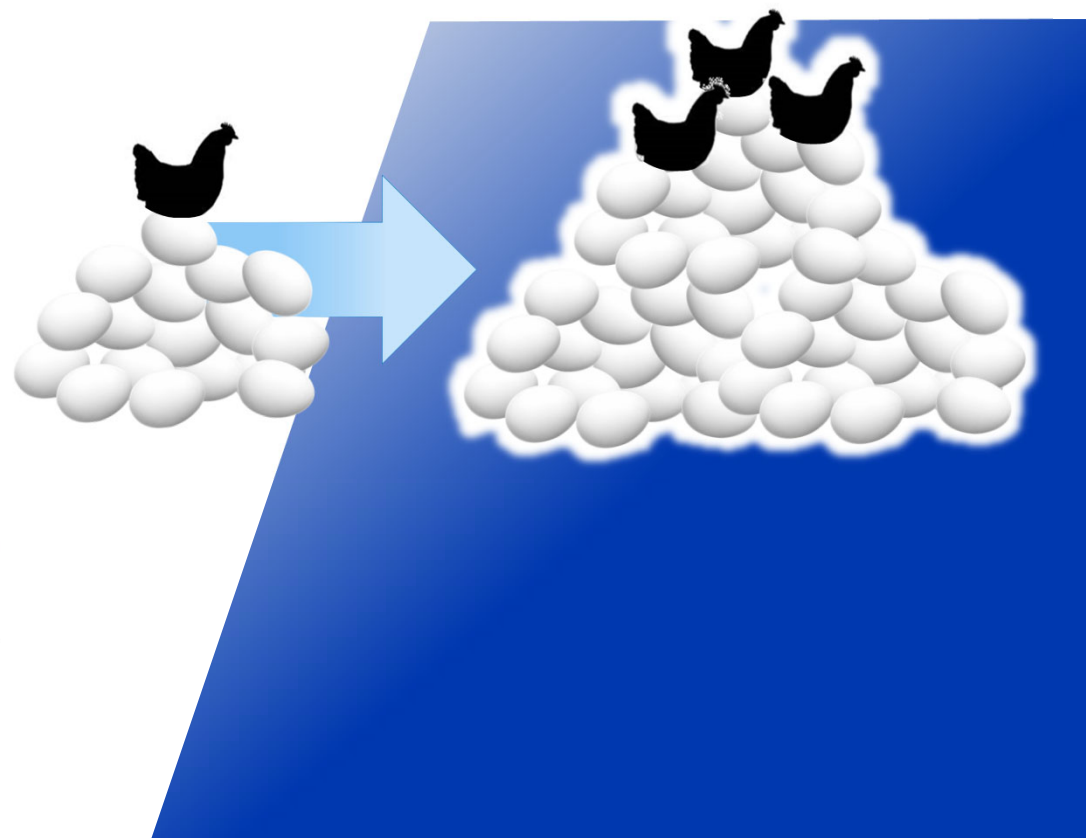
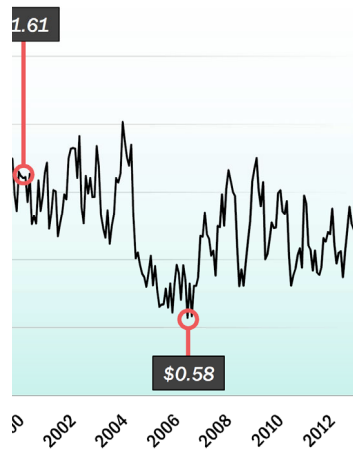


National flock size grew

National egg supply increased

Shell egg prices decreased

**Wholesale Grade A
Large Shell Egg Prices**
(Average Per Month –
Adjusted for Inflation)



The Elements



What is a Conspiracy?

- Not all agreements are conspiracies
- A conspiracy is an agreement or understanding to achieve an unlawful purpose
- A defendant must knowingly join the unlawful plan with the intent to further its purpose

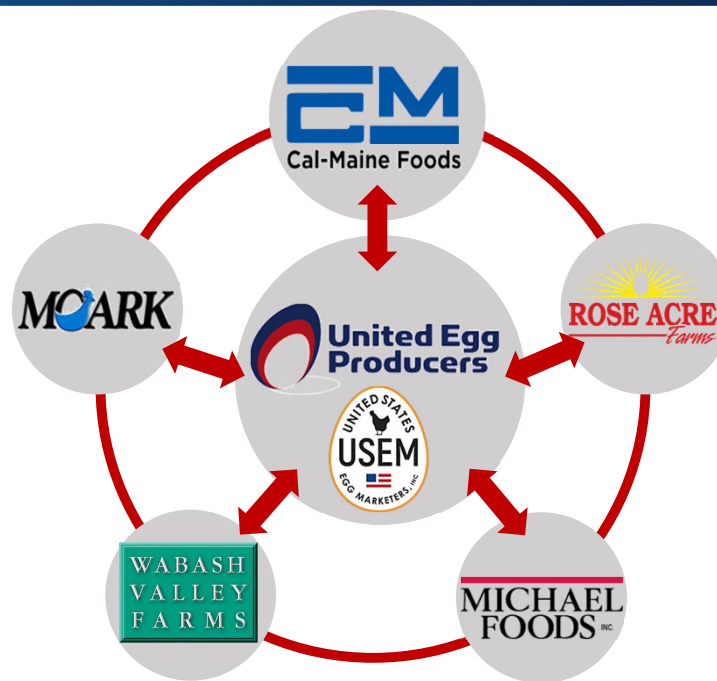
Jury Instruction No. 30, Existence/Explanation of a Conspiracy
Jury Instruction No. 32, Membership in a Conspiracy



The Alleged Conspiracy

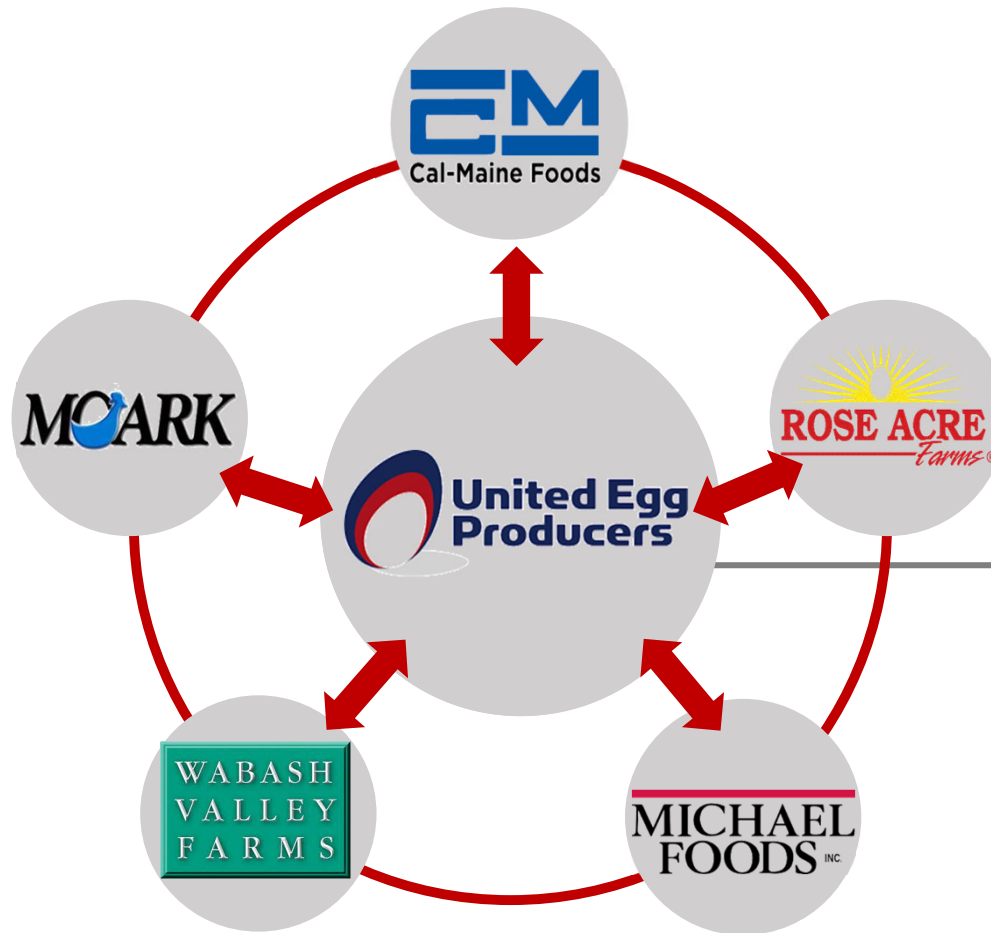


The Conspiracy

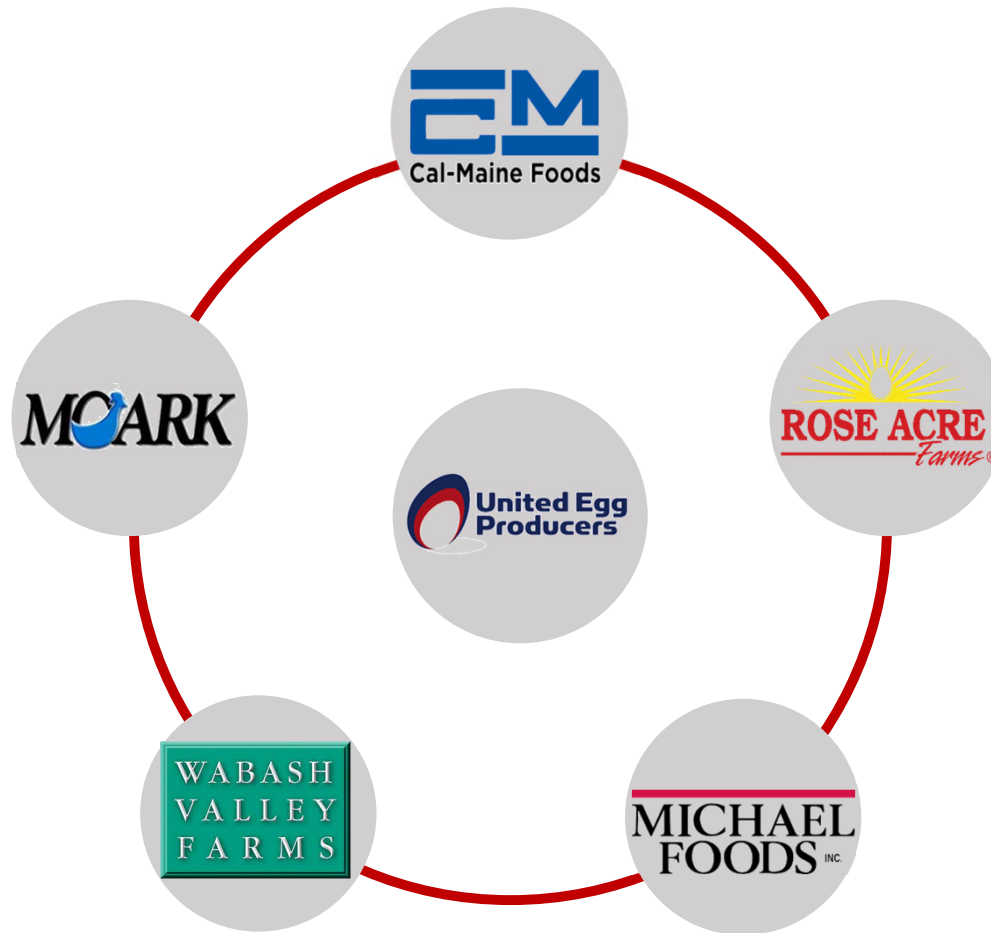


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The Alleged Conspiracy



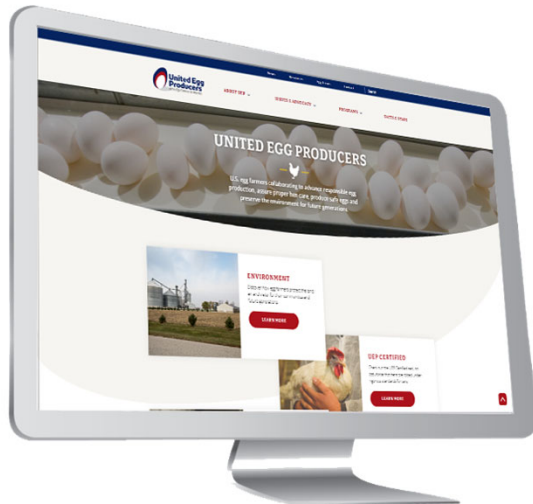
The Alleged Conspiracy



The Alleged Conspiracy



United Voices



United Voices
Gene Gregory - Editor

Exhibit
Tran 31
8/11/23

United Egg Producers

HIGHLIGHTS OF THIS ISSUE

- Export
- Environment Consultant
- Largest Producers

USEM Takes Another Export

The members of United States Egg Marketers (USEM) have once again approved an export of 300 containers (approximately 243,750 cases) for delivery beginning mid-February through March 9th to Germany, Israel, Italy, Japan, and the United Kingdom.

Since mid-October the USEM members have now approved three exports for a total of 690 containers (approximately 566,850 cases). Considering the fact the nation's layer flock inventory was virtually the same during the period of October through February of each year, we must conclude that these exports have had a major positive impact upon shell egg prices and the financial conditions of shell egg producer/marketers. Likewise, the exports have improved, to a lesser degree, breaker stock prices and have benefited those producers selling eggs based upon the Umer Barry breaking stock quote.

During a 17 week period of October 15th through February 9th Umer Barry's Midwest Large quote averaged \$102.5 compared to 78.6 cents per dozen during the same period a year earlier - 23.9 cents per dozen improvement. During the same period breaking stock prices improved by 9.2 cents per dozen.

What did it cost the USEM members to fill these exports? The October export cost each member 43.2 cents per dozen and the January export cost each member 64.9 cents per dozen for an average of the two exports being 59.4 cents per dozen. Some members per dozen for an average of the two exports being 59.4 cents per dozen. Some members pack and deliver their own eggs and incur a loss for the difference between the export sale price and what their eggs would have been worth in the domestic market. Other members

UNITED EGG PRODUCERS
1720 Winward Concourse
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Alpharetta, GA 30006
Phone: (770) 261-2220
FAX: (770) 266-7004
http://www.unitedegg.com

February 14, 2007

HIGHLY CONFIDENTIAL

GMI00023386



Gary Pickett



Binh Tran



UEP Meetings



UEP ANNUAL BOARD MEETING AND EXECUTIVE CONFERENCE OCTOBER 14-15, 1999 TUCSON, ARIZONA

UEP ANNUAL BOARD MEETING AND EXECUTIVE CONFERENCE OCTOBER 14-15, 1999 TUCSON, ARIZONA MINUTES

CALL TO ORDER: The meeting was called to order by Chairman Don Long at 7:00 AM on October 14th with the following members, staff, and guests being present:

MEMBERS: Alan Andrews, Don Bell, Chuck Dynes, Doug Richardson, Rick Brown, Gary West, Joanne Ivy, Paul Sauder, Ron Truex, Ryan Sundberg, Nate Burnham, Jill Benson, Bob Randall, Randy Friesen, Ryan Armstrong, Mark Campbell, David Radlo, Jim DenBleyker, Jerry Grove, Steve Stewart, Bob Kreider, Tony Rehm, Kevin Mussman, Doug Leifermann, Norm Stocker, Laurent Souigny, Greg Pearce, Joe Maust, Rod Smith, Ernest Mahard, Vince Reina, Kurt Kreher, Ron Whaley, Leyenda Lee, Mel Gehman, Paul Renkema, Geoffrey Ochman, Richard Martin, Curtis Ainge, Frankie King, Harold Froese, Steve Boomsma.

STAFF: Dave Bossman, Bob Langert, Philip Derfler, John Reddington, Christopher Knope, EPA.

GUESTS: Alan Andrews, Don Bell, Chuck Dynes, Doug Richardson, Rick Brown, Gary West, Joanne Ivy, Paul Sauder, Ron Truex, Ryan Sundberg, Nate Burnham, Jill Benson, Bob Randall, Randy Friesen, Ryan Armstrong, Mark Campbell, David Radlo, Jim DenBleyker, Jerry Grove, Steve Stewart, Bob Kreider, Tony Rehm, Kevin Mussman, Doug Leifermann, Norm Stocker, Laurent Souigny, Greg Pearce, Joe Maust, Rod Smith, Ernest Mahard, Vince Reina, Kurt Kreher, Ron Whaley, Leyenda Lee, Mel Gehman, Paul Renkema, Geoffrey Ochman, Richard Martin, Curtis Ainge, Frankie King, Harold Froese, Steve Boomsma.

SPECIAL GUEST SPEAKERS:

Dave Bossman – President – American Feed Industry Association
Bob Langert – Director of Public & Community affairs
McDonald's Corporation
Philip Derfler – Deputy Administrator – Office of Policy, Program Development, and Evaluation at **USDA/FSIS**
John Reddington – Director, Dairy, Livestock and Poultry
USDA Foreign Agricultural Service
Christopher Knope – Office of Policy and Reinvention Programs
EPA

Shell Egg Marketing Committee October 20, 2004 New Orleans

Shell Egg Marketing Committee October 20, 2004 New Orleans MINUTES

CALL TO ORDER: Committee Chairman Dolph Baker called the meeting to order at 7:00 AM with the following being present:

Committee & Staff: Dolph Baker, Jim Brock, Jim Dean, Butch DeVries, Chuck Elste, Bob Krouse, Mark Oldenkamp, Beth Schnell, Monte Terry, Derek Yancey, Gib Burton, Roger Deffner, Joe Fortin, Greg Hinton, Ken Looper, Wayne Mooney, Paul Osborne, Al Shimpf, Larry Seger, Doug Wicker, Clint Hickman, Gene Gregory.

Other Attendees: Alan Andrews, Don Bell, Chuck Dynes, Doug Richardson, Rick Brown, Gary West, Joanne Ivy, Paul Sauder, Ron Truex, Ryan Sundberg, Nate Burnham, Jill Benson, Bob Randall, Randy Friesen, Ryan Armstrong, Mark Campbell, David Radlo, Jim DenBleyker, Jerry Grove, Steve Stewart, Bob Kreider, Tony Rehm, Kevin Mussman, Doug Leifermann, Norm Stocker, Laurent Souigny, Greg Pearce, Joe Maust, Rod Smith, Ernest Mahard, Vince Reina, Kurt Kreher, Ron Whaley, Leyenda Lee, Mel Gehman, Paul Renkema, Geoffrey Ochman, Richard Martin, Curtis Ainge, Frankie King, Harold Froese, Steve Boomsma.

Roll Call: Alan Andrews, Don Bell, Chuck Dynes, Doug Richardson, Rick Brown, Gary West, Joanne Ivy, Paul Sauder, Ron Truex, Ryan Sundberg, Nate Burnham, Jill Benson, Bob Randall, Randy Friesen, Ryan Armstrong, Mark Campbell, David Radlo, Jim DenBleyker, Jerry Grove, Steve Stewart, Bob Kreider, Tony Rehm, Kevin Mussman, Doug Leifermann, Norm Stocker, Laurent Souigny, Greg Pearce, Joe Maust, Rod Smith, Ernest Mahard, Vince Reina, Kurt Kreher, Ron Whaley, Leyenda Lee, Mel Gehman, Paul Renkema, Geoffrey Ochman, Richard Martin, Curtis Ainge, Frankie King, Harold Froese, Steve Boomsma.

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Mastermind?



Donald Bell
*Poultry Specialist,
University of California*

Don Bell, University of California Cooperative Extension



UC University of California
CE Cooperative Extension

COOPERATIVE EXTENSION UNIVERSITY OF CALIFORNIA
Number 154
April 15, 1994

An EGG ECONOMICS UPDATE

WHEN MORE MEANS LESS!

At the recent UEP Board of Directors meeting in Phoenix, Arizona, Ken Looper reviewed the procedures he uses for projecting the nation's laying flock each month. During the past 7 years (1987-93) we've seen the U.S. flock size vary from 228.8 to 247.8 million, the price of eggs (USDA market eggs at the farm level) range from 44.1 to 62.5 cents per dozen and the industry's estimated gross income vary from \$2.26 billion to \$3.05 billion - a difference of \$790 million (table 1).

Table 1. Annual egg production, market egg price, table egg layers, chick hatch and estimated industry egg income - 1982-93

Year	Table eggs (billions)	Mkt. egg price (cts/doz)	Table egg layers (mill.)	Female chicks hatched (millions)	Estimated egg income (billion \$)
1985	61.187	49.9	244.4	203.4	2.544
1986	61.569	53.8	245.1	211.8	2.760
1987	62.357	44.1	247.8	213.9	2.292
1988	61.040	44.4	239.3	183.1	2.258
1989	58.540	62.5	230.3	191.5	3.049
1990	58.769	62.0	228.8	199.2	3.036
1991	59.690	56.7	231.6	209.8	2.820
1992	60.757	45.1	233.8	192.9	2.283
1993	61.332	51.7	236.9	203.6	2.642

One of the most important numbers Ken projects each month is the expected number of layers for the next year. This number, along with its associated production, are two of the best predictors of future profits that we have. When the USDA's table egg count is compared to the price the farmer receives for market eggs we see that prices change in the opposite direction by about 1

COOPERATIVE EXTENSION

An EGG ECONOMICS UPDATE

Donald Bell, Poultry Specialist
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University of California, Riverside, CA 92521 USA
Phone (909)787-4555 • Fax (909)787-7251 • Email don.bell@ucr.edu

Economic Implications of Reducing Cage Density in the U.S.

U.S. egg producers in the year 2000 were confronted with a series of issues affecting their businesses including animal welfare, contamination of the environment, and food safety. New legislation was proposed at local, state and federal levels. Issues were debated, modified, and either dismissed or added to the long list of previous regulations affecting the egg industry.

One of the major issues which received a great deal of attention was the issue of animal welfare. United Egg Producers (UEP) took a pro-active role with this issue by appointing a ten member Scientific Advisory Committee (SAC) to make recommendations to their membership regarding animal care. The committee was charged with developing a set of "humane" guidelines for U.S. egg laying flocks. The SAC studied a variety of welfare issues including: housing and cage space allowances, beak trimming, molting, and the transportation and handling of birds. Recommendations were made to UEP's Producer Committee which then reviewed the recommendations and subsequently published a set of guidelines for their membership in November of 2000.

The guidelines that were presented to the industry included recommendations to reduce cage density (increase space allowances) with associated attention given to manure drop-through, feeder space, cage height, water availability, lighting, and air quality among others. Within this area of concern, the question of floor space per bird is probably the most complex to address. Major issues involved with the question of space and compliance with the specific space

Don Bell's Recommendations On Cage Density



Donald Bell
Poultry Specialist,
University of California

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RIVERSIDE, CALIFORNIA 92521

University of California and the United States Department of Agriculture cooperating.

COOPERATIVE EXTENSION
UNIVERSITY OF CALIFORNIA
RIVERSIDE, CALIFORNIA 92521

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Estimated flock sizes beginning this inventory for 1966 - 1969 for fresh eggs or better situations

fresh eggs are difficult to predict. Fresh eggs usually occur during the April to August period when though hen numbers are at their lowest. Corrected to the size of the nation's layer flock, can be obtained by one of several means.

1. A nationwide industry-wide growth policy must be achieved. This requires industry-wide commitment to a "reasonable" growth rate of no more than 3 million flocks per year.

2. State flock must be reduced from the nation's flock permanently. An early start is only a stop-gap.

egg producers must be encouraged to take a hard look at the probability of maintaining each of their state flocks during the period of autonomy for egg prices. Flocks should be sold when it may have no chance of covering their fixed costs during the foreseeable future.

3. A 2-4% reduction in chick purchases would help to lower the future flock size, but the results would be slow.

4. An industry-wide policy of a minimum floor space allowance would result in a more ideal national flock size. It is currently estimated that 15-20% of the nation's birds are housed at less than 48 square inches. If 48 square inches were adopted as the minimum space allowance, millions of extra birds would be eliminated.

Unhatched is dependent upon feed prices and the size and potential disposition of the 1966 crop in 1969 at this time.

Egg needs are based upon the size of the human population and their demand for eggs. The population can be projected to increase at the rate of about 1% per year. The demand for eggs is dependent upon the good and bad weather about 2.5 to 3.0 million additional hens each year.

I personally believe that net income for the industry would be higher if fewer non-producers could be broken to 200 -

here with a report -

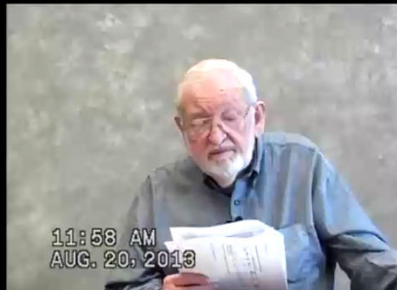
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Prepared by Don Bell, Poultry Specialist, University of California

Rev. 03/69 Pg. 0011

RELL007708

Don Bell's Recommendations On Cage Density



STRENGTH TO PM

Estimated Break-even Beginning Hen Inventory for 1999 - 2000 for Break-even or Better Situation

Break-even conditions are difficult to predict. Break-even rarely occurs during the April to August period even though hen numbers are at their lowest. **Correction in the size of the nation's layer flock can be attained by one of several means.**

Estimated Break-even Beginning Hen Inventory for 1999 - 2000 for Break-even or Better Situation

Break-even conditions are difficult to predict. Break-even rarely occurs during the April to August period even though hen numbers are at their lowest. **Correction in the size of the nation's layer flock can be attained by one of several means.**

1. A sensible industry-wide growth policy must be adhered to. This requires industry-wide commitment to a "reasonable" growth rate of no more than 3 million hens per year.
2. **Extra birds must be removed from the nation's flock permanently.** An early molt is only a stop-gap way of correcting the problem.

Egg producers must be encouraged to take a hard look at the profitability of maintaining each of their older flocks during this period of **extremely low egg prices.** Flocks should be sold early if they have no chance of covering their feed costs during the foreseeable future.
3. A 2-3% reduction in chick purchases would help to lower the future flock size, but the results would be slow.
4. An industry-wide policy of a minimum floor space allowance would result in a more ideal national flock size. It is currently estimated that 15-20% of the nation's birds are housed at less than 48 square inches. If 48 square inches were adopted as the minimum space allowance, millions of extra birds would be eliminated.

EX- 0329 Pg. 0011

BELL007708

within my realm.

BY MR. OLSON:

Q. Number 4 refers to an industry-wide policy

Gene Gregory



Gene Gregory

**“ ... I’m no economist and
therefore look at things
in a simple manner... ”**

UEP Supply Recommendations

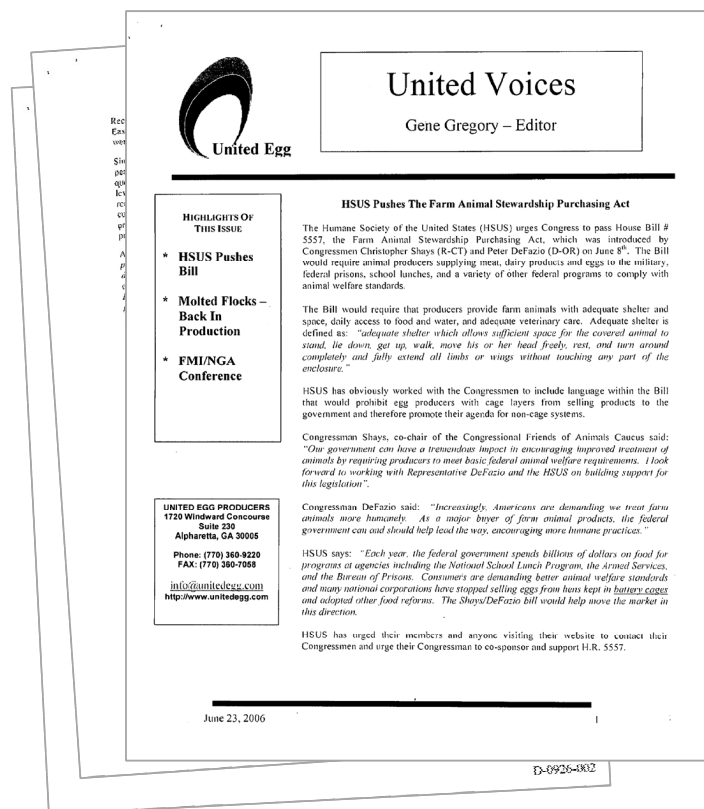


Voluntary

Not followed

Not enforced

Am I Wasting My Time...?



“ USDA reported the nation’s layer flock on June 1st to be 7.3 million hens larger than on the same date a year ago. . . . What happened while I must have been asleep? ”

–June 30, 2004 United Voices

“ The first hatch reductions to meet the animal care certified program began in April 2002 and with 80% of the industry committed to the program, we didn’t think we would have to worry about unprofitable times for a few years. How wrong could we have been? ”

–July 16, 2004 United Voices

“ Did anyone follow the recommendation to dispose of flocks six weeks early? Do these wide market swings do a disservice to our customers? Am I wasting my time writing about this and urging producers to be more responsive? Egg producers, whether marketing shell egg or egg products, are going to have to come to terms with the oversupply problem. ”

–June 23, 2006 United Voices

So-Called Short-Term Measures Had No Effect



Michael Baye

Q. Dr. Baye, is it your view that the short-term flock reduction measures were unsuccessful?

A. **I think it's fair to say they were unsuccessful.**

— Testimony of M. Baye, 2567:6-8 (Oct. 31, 2023)

Q. You can't tell this jury whether a molt had an impact on egg-laying production, either positive or negative, correct?

A. **Not with a degree of scientific certainty because the only evidence I have of that is the documentary record, the statements by the UEP.**

— Testimony of M. Baye, 2811:13-18 (Oct. 31, 2023)

Q. You don't know whether anyone actually followed through --

A. **That's correct.**

Q. -- on a slaughter, correct?

A. **That's absolutely correct.**

Q. So if you don't know if anyone actually followed through and slaughtered 1 hen, 10 hens, 100 hens, 1,000 hens, 10,000 hens, you can't measure whether a recommended slaughter had any impact, positive or negative, on production of egg-laying hens?

A. **That's correct.**

— Testimony of M. Baye, 2815:5-14 (Oct. 31, 2023)

UEP's Scientific Advisory Committee



Dr. Jeff Armstrong
*Head, Dept. of Animal
Science, Purdue University*



Dr. Ruth Newberry
*Asst. Professor, Dept. of
Animal Sciences,
Washington State University*



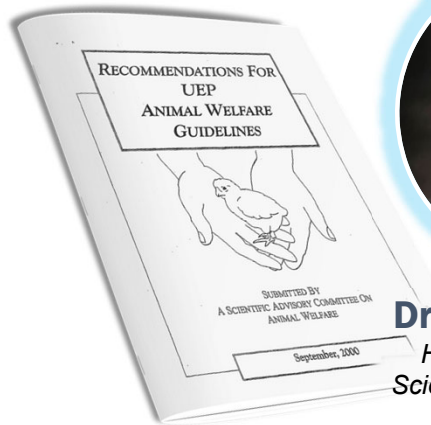
Dr. Joy Mench
*Professor, Dept. of
Animal Sciences,
University of California*



Dr. Janice Swanson
*Associate Professor, Animal
Science and Industry,
Kansas State University*



Dr. Patricia Hester
*Professor of Animal
Sciences, Purdue
University*



Dr. Larry Stanker
*Research Leader,
USDA-ARS*



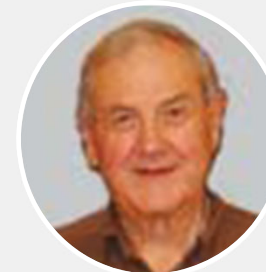
Dr. Bill Chase
*Veterinarian,
Kestrel, Inc.*



Adele Douglass
*Director, American
Humane Association*



Donald Bell
*Poultry Specialist,
University of California*



Barrie Wilcox
*Wilcox Farms, Inc.
Supporter*



Gene Gregory
*Staff Coordinator,
United Egg Producers
Supporter*

UEP Certified Program Timeline



1999
UEP Scientific Advisory
Committee formed

September 2000
SAC Recommendations
for UEP Animal Welfare
Guidelines

April 2002
UEP Animal Husbandry
Guidelines for U.S. Egg
Laying Flocks "go live"

1999

2000

2001

2002

2003

2004

2005

2006

2007

UEP Expected Guidelines Would Evolve Over Time

A book cover titled "RECOMMENDATIONS FOR UEP ANIMAL WELFARE GUIDELINES". It features a line drawing of a hand holding a small animal. Below the title, it says "SUBMITTED TO A SCIENTIFIC ADVISORY ANIMAL WELFARE GROUP".

Recommendations

EXHIBIT
P-245

1. The UEP should regularly review and revise their Guidelines for hen welfare to take into account current scientific knowledge about hen welfare.

A book cover titled "UNITED EGG PRODUCERS ANIMAL HUSBANDRY GUIDELINES FOR U.S. EGG LAYING FLOCKS 2002 EDITION". It features a yellow background with a blue and red logo at the top left and a drawing of a hen sitting on a nest.

UNITED EGG PRODUCERS
ANIMAL HUSBANDRY
GUIDELINES FOR

EXHIBIT
D-433

This document will provide recommendations for the following management practices. This is a living document subject to changes as new scientific information becomes available.

U.S. EGG
LAYING FLOCKS
2002 EDITION

UEP Partnership with FMI and NCCR



JUNE 2002 REPORT FMI-NCCR Animal Welfare Program

Laying Hens

FMI and NCCR recommend to their members the 2002 guidelines of the United Egg Producers (UEP) for use with their suppliers of eggs and egg products.

STATUS FMI-NCCR Animal Welfare Guidelines Updated March 2007

<u>Producer Organization</u>	<u>FMI-NCCR Endorsement</u>	<u>Points of Difference</u>
United Egg Producers (UEP)	Endorsed production, handling, transportation, processing and euthanasia guidelines for layers of shell and breaking eggs (2002).	None

Customers Wanted One Standard



Karen Brown



Q. Did you have an understanding as to whether these **members [of FMI]** **perceived a benefit to having ... a single industry approach** to animal welfare as opposed to multiple approaches by individual companies?

[A]. **The whole industry benefits from that approach.** Certainly suppliers and producers would benefit if there is a common industry position on an issue that affects them so directly, and, therefore, they do not have to deal with different requests, different specifications on the same issue.

—Testimony of K. Brown, 58:11-59:2 (April 23, 2014)



Q ...[W]hy was it relevant that [Wal-Mart's] competitors were following this FMI/UEP Certified Program?

A. ...**[i]f we're using the same certifications as our competitors, then that's more efficient for those existing suppliers that we used because they don't have to run two different programs and violate the 100% Rule. So UEP was generally recognized as the most logical program to utilize.**

—Testimony of G. Pickett, 4217:21-4218:4 (Nov. 07, 2023)



A. **Why are standards important? Because if you -- well, if you don't have standards then you don't know what the rules of the game are.**

—Testimony of B. Tran, 297:7-9 (Aug. 13, 2013)

Q. And you said because it gives a certain measure of predictability?

A. Yeah. **Predictability is one factor.**

—Testimony of B. Tran, 296:20-22 (Aug. 13, 2013)

UEP Certified Program Timeline



1999
UEP Scientific Advisory
Committee formed

November 1999
Work begins on the FMI-NCCR
Animal Welfare Guidelines

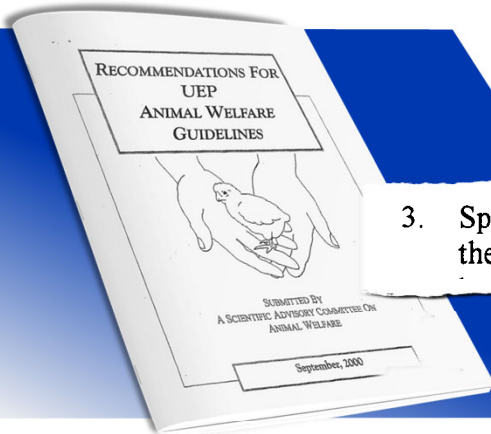
September 2000
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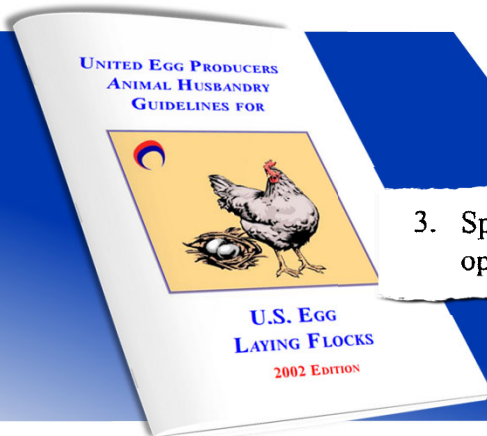
April 2002
UEP Animal Husbandry
Guidelines for U.S. Egg
Laying Flocks "go live"

1999 2000 2001 2002 2003 2004 2005 2006 2007

Cage Space Allowance



3. Space allowance should be in the range 67 to 86 square inches of usable space per bird, depending on the type of cage and the type of bird that is being housed



3. Space allowance should be in the range of 67 to 86 square inches of usable space per bird to optimize hen welfare.

Phase In



INDUSTRY



SCIENTIFIC COMMITTEE AND FMI



COMPROMISE

UEP Certified Program Timeline



1999
UEP Scientific Advisory
Committee formed

November 1999
Work begins on the FMI-NCCR
Animal Welfare Guidelines

September 2000
SAC Recommendations
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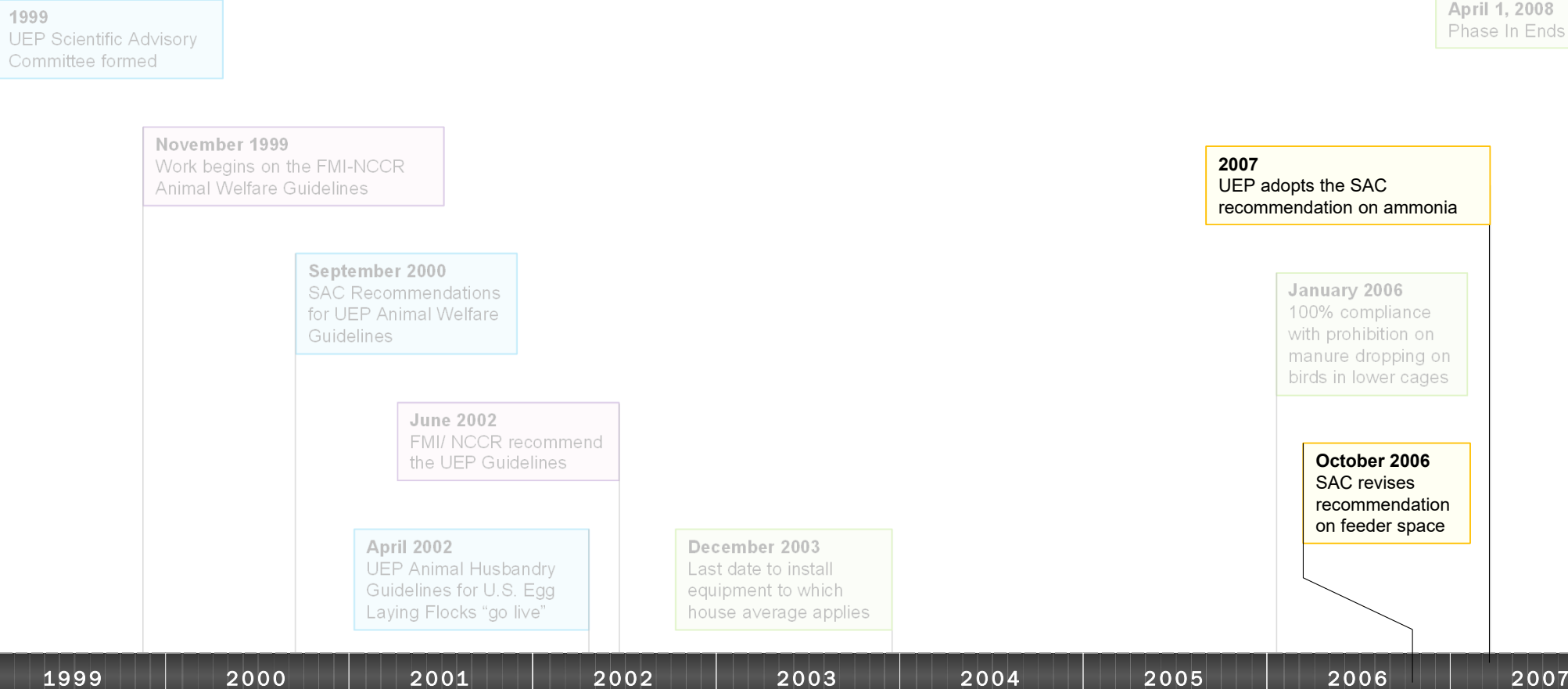
December 2003
Last date to install
equipment to which
house average applies

January 2006
100% compliance
with prohibition on
manure dropping on
birds in lower cages

April 1, 2008
Phase In Ends

1999 2000 2001 2002 2003 2004 2005 2006 2007

UEP Certified Program Timeline



Backfilling



MICHIGAN STATE UNIVERSITY

October 4, 2004

Chairman Paul Behan
Producer's Committee for Animal Welfare
United Egg Producer (UEP) Headquarters
1720 Windward Concourse, Suite 230
Alpharetta, GA 30005

Dear Chairman Behan:

The UEP Scientific Advisory Committee for Animal Welfare is extremely concerned about the egg industry's current practices of backfilling. When the scientific committee established the welfare guidelines for cage space allocation, it was not our original intention to allow for the backfilling of cages by spare birds.

S

Bird welfare is compromised when backfilling is done every month to replace mortality for the purpose of keeping houses full. Science has shown that mixing birds from other flocks and with different ages increases susceptibility to disease. Older hens may harbor disease-causing pathogens that are easily transmitted to younger pullets that may have not been fully vaccinated or have had the opportunity to develop full immunocompetency. In addition, the introduction of unfamiliar birds to resident birds increases social competition and stress, which can increase mortality and decrease production.

OFFICE OF THE
DEAN
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and Natural Resources
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www.canr.msu.edu

It is with utmost urgency that the Producer's Committee for Animal Welfare advises egg producers who participate in UEP's Animal Care Certified Program to eliminate the practice of backfilling. Your customers as well as FMI and NCCR will not approve of the practice of backfilling. It is essential that you maintain science-based guidelines. We urge you to make this correction. It is imperative that the egg industry responds quickly to this issue so that they can continue to be the leaders in animal agriculture relative to self-regulation of welfare guidelines.

MSU is an affirmative action
Equal opportunity institution.

Sincerely,

Jeff Armstrong
Jeff Armstrong, Chair
Scientific Advisory
Committee for UEP



CONFIDENTIAL

NUCAL-08md2002-0001116

DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0882

D-0882-0001 of 0001

0882 2004.10.04_Letter from Armstrong_NUCAL-08md2002-0001116

Bird welfare is compromised when backfilling is done every month to replace mortality for the purpose of keeping houses full. Science has shown that mixing birds from other flocks and with different ages increases susceptibility to disease. Older hens may harbor disease-causing pathogens that are easily transmitted to younger pullets that may have not been fully vaccinated or have had the opportunity to develop full immunocompetency. In addition, the introduction of unfamiliar birds to resident birds increases social competition and stress, which can increase mortality and decrease production.

It is with utmost urgency that the Producer's Committee for Animal Welfare advises egg producers who participate in UEP's Animal Care Certified Program to eliminate the practice of backfilling. Your customers as well as FMI and NCCR will not approve of the practice of backfilling. It is essential that you maintain science-based guidelines. We urge you to make this correction. It is imperative that the egg industry responds quickly to this issue so that they can continue to be the leaders in animal agriculture relative to self-regulation of welfare guidelines.

UEP Certified Program Timeline



1999
UEP Scientific Advisory
Committee formed

November 1999
Work begins on the FMI-NCCR
Animal Welfare Guidelines

September 2000
SAC Recommendations
for UEP Animal Welfare
Guidelines

June 2002
FMI/ NCCR recommend
the UEP Guidelines

April 2002
UEP Animal Husbandry
Guidelines for U.S. Egg
Laying Flocks "go live"

December 2003
Last date to install
equipment to which
house average applies

October 2004
SAC recommends eliminating backfilling

2005
UEP Guidelines prohibit backfilling

December 2004
UEP Producer Committee
votes to prohibit backfilling

2007
UEP adopts the SAC
recommendation on ammonia

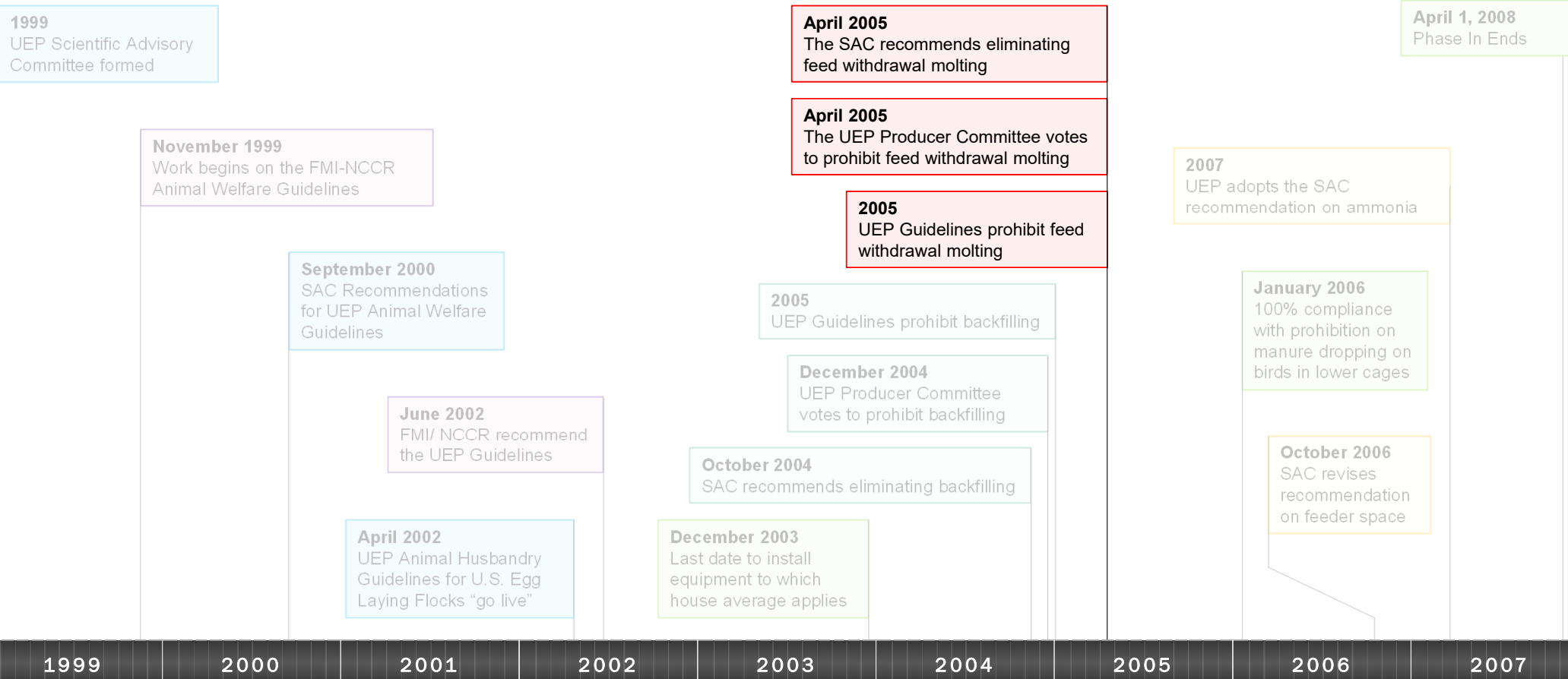
January 2006
100% compliance
with prohibition on
manure dropping on
birds in lower cages

October 2006
SAC revises
recommendation
on feeder space

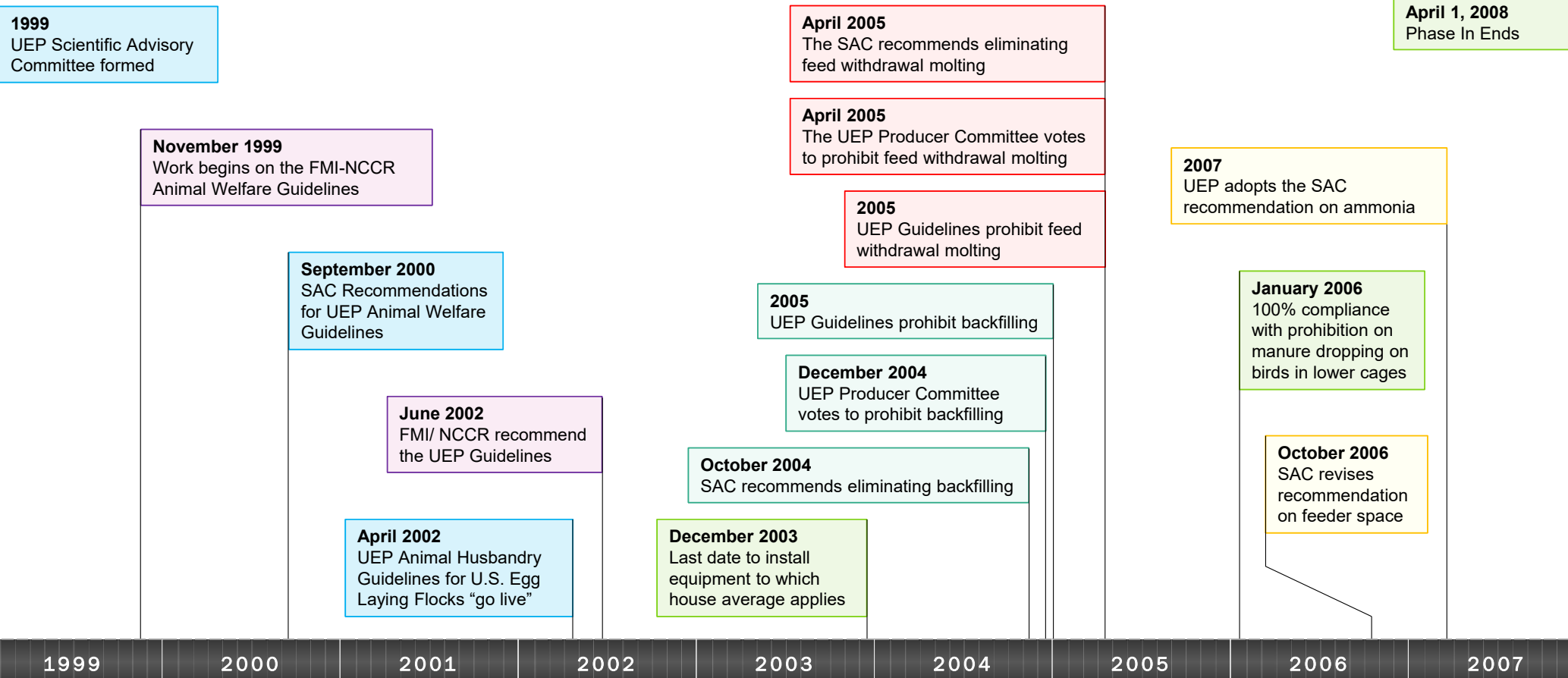
April 1, 2008
Phase In Ends

1999 2000 2001 2002 2003 2004 2005 2006 2007

UEP Certified Program Timeline



UEP Certified Program Timeline



UEP Certified Program



100% Rule

Audits



100% Rule



Protects the integrity of the
UEP Certified brand

The Scientists Supported the 100% Rule



MICHIGAN STATE
UNIVERSITY

November 29, 2006

Gene Gregory
1720 Windward Cucumber
Suite 250
Alpharetta, GA 30005

Dear Gene:

The egg industry was one of the
guidelines for an animal agriculture
(UEP) commissioned an independent
science-based recommendations 6
hens. I was asked to constitute a
nationally respected participants
interested in developing and adopti

S

United Egg Producers Scientific A

OFFICE OF THE
DEAN
College of Agriculture and
Natural Resources
Michigan State University
102 Agriculture Hall
East Lansing, MI
48824-1120
917355-0232
fax 917355-3990
e-mail armstrong@msu.edu
www.cant.msu.edu

- Jeff Armstrong, Michigan State University
- Dan Bell, University of California - Riverside
- Bill Chase, DVM, VetsTech, Inc.
- Adele Douglass, American Humane Association (no longer a member)
- Patricia Hester, Purdue University
- Joy Mendel, University of California - Davis
- Ruth Newberry, Washington State University
- Margaret Shes-Moore, formerly USDA-Agricultural Research Service, Livestock
- Behavior Unit (no longer a member)
- Larry Stauber, USDA-ARS (n
- Janice Swanson, Kansas State
- Paul Thompson, Michigan State
- Gail Golub, DVM, American V
- 2005)

The attached document includes th
housed in cages, and we have sto
hens in cage systems. We believe t

MSU is an affirmative action
Equal opportunity institution.

With consummate professional
findings, the United Egg Producers
full adoption of the guidelines. I
from the beginning that the guideli
feed withdrawal as an acceptable

It is our collective and firm belief that any program approved by UEP or USDA should require 100% implementation. While both seals represent marketing programs, we

believe failure to ensure 100% implementation threatens the welfare of laying hens and the overall credibility of our science-based guidelines.

CONFIDENTIAL

UE0366667

DEFENDANTS'
EXHIBIT
Case No. 1:11-cv-08808
D-0489

D-0489-0001 of 0002

0489 2006.11.29_Letter from Armstrong_UE0366667

FMI Supported the 100% Rule



Karen Brown



“ Our goal is enhanced animal welfare for all animals in food production - not animals used only for certain products or product categories ”

“ So if I'm a chicken whose eggs are going into this product versus a chicken whose eggs are going into that product, why should that make any difference as to how I'm handled as an animal. Why should I be less humanely handled because of what product I end up in ”

-Testimony of K. Brown, 213:4-214:20 (April 23, 2014)

Customers Supported the 100% Rule



Gary Pickett



Q....From your perspective as the egg buyer, why was it important to Walmart to only purchase eggs from suppliers who were complying with the 100% Rule?

A. Well, the -- you know, one of the -- **one of the critical issues was consistency of the product that we received.** You know, there's lots of examples of when suppliers did multiple programs or things of that nature.

For example, there was a couple of primary examples, you know, in the -- in the produce area, for example, that we could only ship avocados from Mexico to a particular -- some states but not other states.

It's very difficult to ensure -- if a plant has multiple programs that they're running, the likelihood goes up that the retailer would receive product that was not UEP, because the same lines that run a UEP and other -- if you don't have the hundred percent, you run the risk of receiving uncertified product.

Q. And why is consistency of product important to a company like Walmart?

A. Well, reputation is -- is very important. We thought that we were making a step that was an appropriate response at that time. **We did not want to take the risk, which would have been a higher risk, of receiving product that were not certified under the UEP guidelines that we had communicated.**

-Testimony of G. Pickett, 4214:4-4215:2 (Nov. 07, 2023)

UEP Certified Audit



Cage space



Feed withdrawal molting



Backfilling prohibition



Co-mingling of Certified and non-Certified eggs

The Elements



Plaintiffs have the burden to prove

- A contract, combination, or conspiracy
- That unreasonably restrains trade
- That caused Plaintiffs to suffer an injury



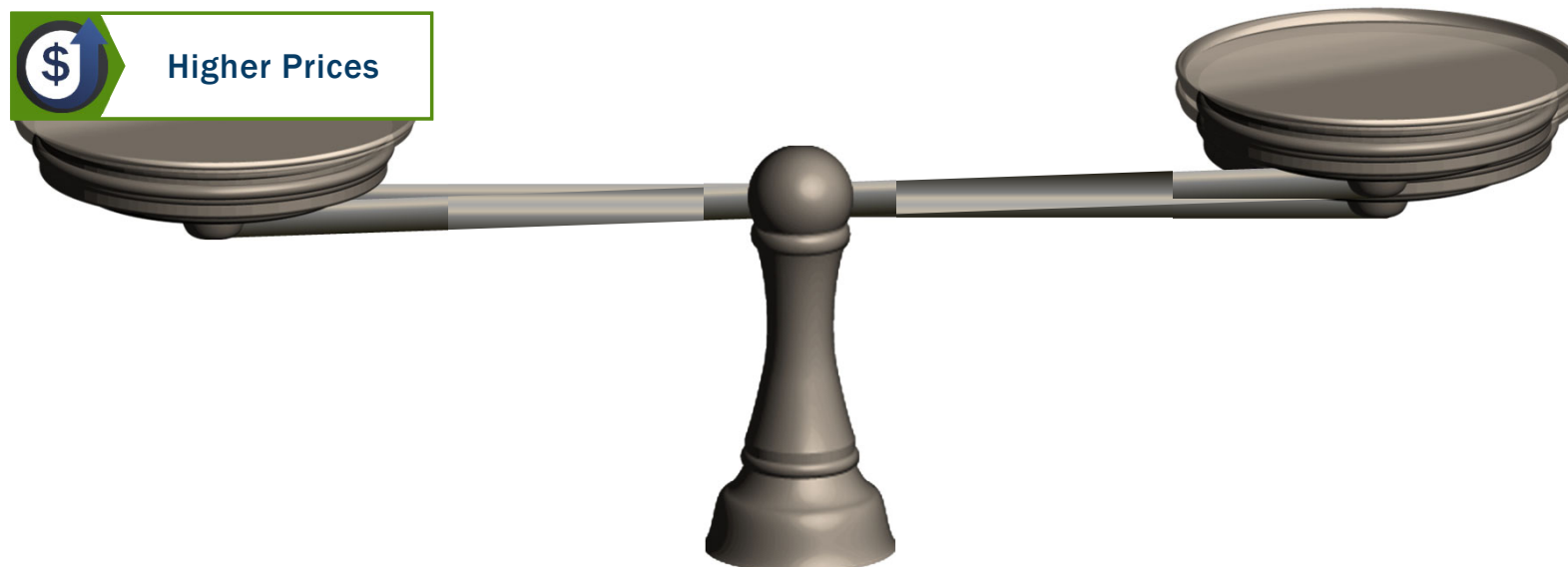
Jury Instruction No. 28, The Elements

Certified Program — Not an Unreasonable Restraint of Trade



Competitive Harm

Competitive Benefits



Certified Program — Not an Unreasonable Restraint of Trade



Competitive Harm



Competitive Benefits



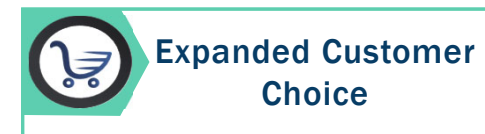
Certified Program — Not an Unreasonable Restraint of Trade



Competitive Harm



Competitive Benefits



Certified Program — Not an Unreasonable Restraint of Trade



Competitive Harm



Competitive Benefits



The Certified Program Is Not an Agreement to Restrict Supply



DOES NOT limit number of birds or eggs

DOES NOT limit cages

DOES NOT limit hen houses

DOES NOT limit farms

The Alleged Conspiracy



Non-Member Certified Companies

[illegible]

Defs. Exs. 1239, 1250,
1241, 1240, 1242, 502, 515

EXHIBIT
D-1240

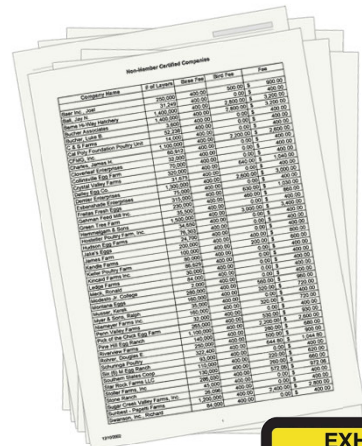
Non-Member Certified Companies

Company Name	# of Layers	Base Fee	Bird Fee	Total	2006	PR Fee	2006 PR
			0.002		Amt. Pd.	0.003	Fee Pd.
Big Stone Colony	8,800	200.00	0.00	200.00	200.00	26.40	26.40
Brendle Farms	65,000	400.00	0.00	400.00		195.00	
Bucher Associates	1,100,000	400.00	2,200.00	2,600.00	2,600.00	3300.00	3300.00
C & S Farms	52,238	400.00	0.00	400.00	400.00	156.71	156.71
Cal Poly Foundation Poultry Unit	14,000	200.00	0.00	200.00	200.00	42.00	42.00
Country Fresh Poultry	15,840	200.00	0.00	200.00	200.00	47.52	47.52
Crystal Valley Farms	92,000	66.67	0.00	66.67	66.67	46.00	46.00
Gehman Feed Mill Inc.	230,000	400.00	460.00	860.00	860.00	690.00	690.00
Georgia Dept. of Corrections	120,000	400.00	240.00	640.00		360.00	
Golden Valley Colony	10,600	200.00	0.00	200.00		31.80	
Gretna View Farms	39,800	200.00	0.00	200.00	200.00	119.40	119.40
Hemmelmarn & Sons	1,500,000	400.00	3,000.00	3,400.00	3,400.00	4500.00	4500.00
Hohberg Poultry Ranches	650,000	400.00	1,300.00	1,700.00	1,700.00	1950.00	1950.00
Judge Farms Inc.	71,400	400.00	0.00	400.00	400.00	214.20	214.20
Kincaid Farms Inc.	86,629	400.00	0.00	400.00	400.00	259.89	259.89
Mahrt, Boyd	202,000	400.00	404.00	804.00	804.00	606.00	606.00
Modesto Jr. College	2,000	0.00	0.00	0.00	0.00	0.00	0.00
Montana Eggs	180,000	400.00	360.00	760.00		540.00	
Mountain View Colony, Inc.	13,900	200.00	0.00	200.00	200.00	41.70	41.70
Niemeyer Farms Inc.	160,000	400.00	320.00	720.00	720.00	480.00	480.00
Pick of the Chick Egg Farm	265,000	400.00	530.00	930.00		795.00	
Riverview Farms	140,000	400.00	280.00	680.00	680.00	420.00	420.00
Stone Ranch	45,000	200.00	0.00	200.00	200.00	135.00	135.00
Sunbest - Papetti Farms	1,200,000	400.00	2,400.00	2,800.00	2,800.00	3600.00	3600.00
Wenger's Feed Mill	4,844,218	400.00	9,688.44	10,088.44	10,088.44	14532.65	14532.65
Wenning Poultry	585,000	400.00	1,170.00	1,570.00	1,570.00	1755.00	1755.00
Total Layers & Fees	11,693,425	8,266.67	22,352.44	30,619.11	27,689.11	34,844.28	32,922.47

The Alleged Conspiracy



Member Certified Companies



Defs. Exs. 438, 450,
457, 464, 471, 477, 478, 483,
490, 492, 495, 499, 503, 506, 516

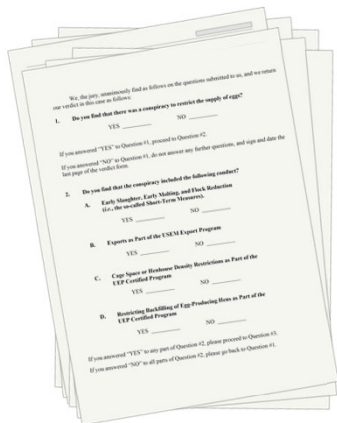
Company
Active Feed Co.
American Egg Products, Inc.
Arkansas Egg Co. LLC
Armstrong Egg Farms
Aro's Poultry Farm Inc.
Berne Hi-Way Hatchery
Braswell Egg Co.
Caldwell Foods, LLC
Cal-Maine Foods
Chestnut Mtn. Egg Farm
Coffee Street Acres
Country Charm Egg Distribu
Country Creek Farms, LLC
Countryside Eggs
Creighton Brothers
Crystal Farms
Dakota Layers LLC
Daylay Egg Farm
Delta Farms
Demler Egg Ranch
Demler Enterprises
Deweerd, Vernon J.
Dorothy Egg Farms
Dynes Farms, Inc.
Egg & I
Egg Innovations/EIPC
Fassio Egg Farms
Feather Crest Farms, Inc.
Featherland Egg
Flieg's Poultry Farm

Ft. Recovery Equity Excha
Freitas Fresh Eggs
Garber Poultry Farms
Gemperle Farms
George's
Giroux Poultry
Glenwood Foods, LLC
Grand Mesa Eggs
Green Forest Egg Co. LLC
Green Valley Poultry Farm
Harmony Egg Ranch
Herbruck's Poultry Ranch
Hertzfeld Poultry Farms, In
Hickman's Egg Ranch, Inc
Hidden Villa
Hillandale, LLC (FL)
Hillandale Gettysburg, L.P.
Hillside Poultry Farm
Hoover Ranch
Idalou Egg Ranch
ISE America
ISE Newberry
IVA Inc.
James Farm
Jensen, J. Wilmar
Jenkin's Poultry Farm
Jordan Egg Farm, Inc.
Kofkoff Egg Farm
Kreher's Poultry Farm
L & R Farms
Latta's Egg Ranch
LCC Browns
Ledge Farms

Lehman's Egg Service
LeValle Egg Farms
Mahard Egg Farm
Maxim Production Co.
McAnnally Ent.
MCM Poultry
Mepkin Abbey
Merrill's Egg (6 months)
Midwest Poultry
Minnich Poultry Farm
Moark Productions, Inc.
Monty Produce
Morning Fresh Farms
Mountain Hollow Farms
Mussman's Back Acres
National Food Corp.
Nelson-Ventures, Randy
Norco
North Alabama Egg Co.
Oakdell Egg Farms
Ohio Fresh Eggs
Old Pike Farm
P & R Farms, Inc.
Pearl Valley Eggs
Pilgrim's Pride
Pine Creek Farms, LTD
Pine Hill Egg Ranch
Powl Associates
Puglisi Egg Farm
Quality Eggs of New Eng
R & S Farms
Red Bird Egg Farms (ISI
Rigtrup Poultry

Rindler Poultry
Ritewood, Inc - Oakdell
Rolling Hills (MONTHLY)
Rose Acres
S & R Egg Farm
Sauder
Schipper Poultry Farm
Schuringa Poultry
Shepherd and Sons Poultr
Simpson's Egg
SKS Enterprise, Inc.
Smith's Quality Egg
Soncrest Egg Farms
Southern New England Eg
Sperry Farms
Stiebers Farms
Stoller Farms, Inc
Sunbest Foods - IA
Sunrise Acres
Sunrise Farms - CA
Su's Chicken Farm
Tampa Farm Service
Thomas Poultry Farm
Triple A Farms, Inc.
United Egg Marketing
Valley Fresh Foods
Wabash Produce
Warren Farms
Weaver Brothers
Wegmans
West & Co., JS
Wilcox Farms
Wilfie Farms

Verdict Form

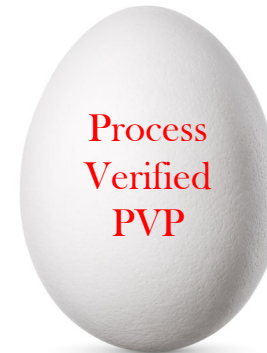


8. Do you find that every egg producer who joined the UEP Certified Program through 2008 (whether or not a member of UEP) participated in the conspiracy to restrict the supply of eggs?

YES _____

NO ☒ _____

Customers Had Choices



“Who In Their Right Mind Wouldn’t Demand a Certified Egg”?

Testimony of M. Baye at 2608:14



Michael Baye

“ [W]ho in their right mind would want to buy an uncertified egg? I mean, it’s just not a good thing, right. ”

–Testimony of M. Baye, 2608: 5-7



Gary Pickett

“ [W]e were a UEP house. ”

Testimony of G. Pickett, 4221: 3



The Alleged Conspiracy



The Alleged Conspiracy



The Alleged Conspiracy



The Evidence Has Shown



No agreement to restrict supply

- Short-term measures were voluntary
- UEP Certified Program does not limit eggs/hens/cages/houses/farms
- Producers joined the UEP Certified Program to meet customer demand

The Evidence Has Shown



Competitive benefits

- UEP Certified Program increased customer choice
- UEP Certified Program met customer demand

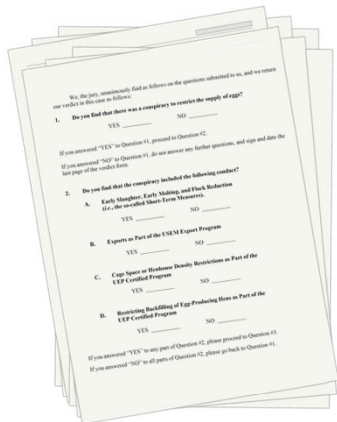
The Evidence Has Shown



No competitive harm or injury

- No evidence that short-term measures reduced supply or increased price
- No evidence that the alleged conspirators' participation in the UEP Certified Program reduced supply or increased price

Verdict Form



We, the jury, unanimously find as follows on the questions submitted to us, and we return our verdict in this case as follows:

1. Do you find that there was a conspiracy to restrict the supply of eggs?

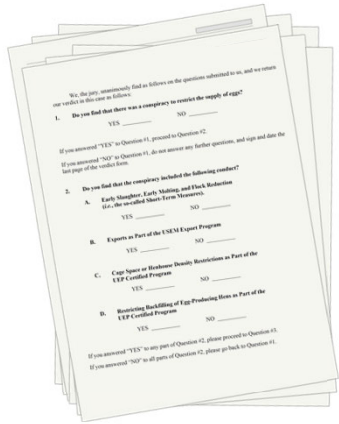
YES _____

NO X

If you answered “YES” to Question #1, proceed to Question #2.

If you answered “NO” to Question #1, do not answer any further questions, and sign and date the last page of the verdict form.

Verdict Form



2. Do you find that the conspiracy included the following conduct?

A. Early Slaughter, Early Molting, and Flock Reduction (i.e., the so-called Short-Term Measures).

YES

NO



B. Exports as Part of the USEM Export Program

YES

NO

C. Cage Space or Henhouse Density Restrictions as Part of the UEP Certified Program

YES

NO



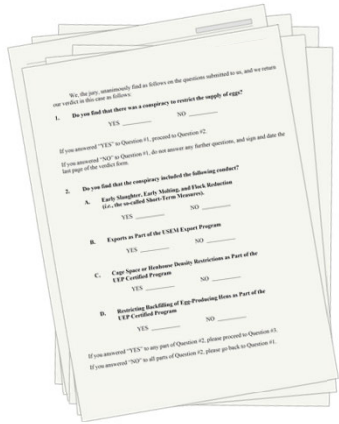
D. Restricting Backfilling of Egg-Producing Hens as Part of the UEP Certified Program

YES

NO



Verdict Form



3. Do you find that the following Defendants participated in the conspiracy to restrict the supply of eggs?

Cal-Maine Foods

YES

NO

Rose Acre Farms

YES _____

NO _____

United Egg Producers

YES

NO

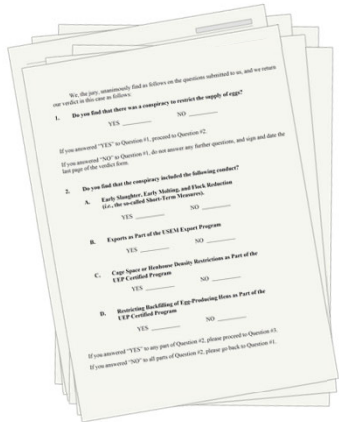


United States Egg Marketers

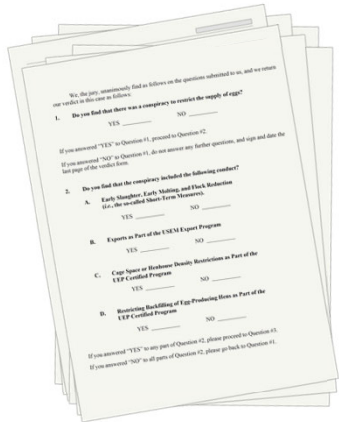
YES

NO

Verdict Form



Verdict Form



6. Do you find that the following Plaintiffs suffered an injury to their business or property caused by the participation by one or more Defendants or any alleged co-conspirators in a conspiracy that unreasonably restrained trade?

Kraft Foods Global

YES _____

NO _____



The Kellogg Company

YES _____

NO _____



General Mills

YES

NO _____



Nestlé USA



